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11  
 12 UNITED STATES DISTRICT COURT  
 13 NORTHERN DISTRICT OF CALIFORNIA

14 SYBASE, INC., a Delaware Corporation, and  
 15 INFORMATICA CORPORATION, a Delaware  
 Corporation,

16 Plaintiffs,

17 vs.

18 DATA RETRIEVAL TECHNOLOGY LLC, a  
 19 Delaware Corporation,

20 Defendant.

21 DATA RETRIEVAL TECHNOLOGY LLC, a  
 Delaware Corporation,

22 Plaintiff,

23 vs.

24 SYBASE, INC., a Delaware Corporation, and  
 25 INFORMATICA CORPORATION, a Delaware  
 Corporation,

26 Defendants.

No.: C08-05481 VRW  
 (Related Case No: C09-1909 VRW)  
 (Related Case No: C09-5360 VRW)

~~PROPOSED~~ STIPULATED AMENDED  
 PROTECTIVE ORDER

The discovery procedures in Case No. C08-05481 VRW and Related Case Nos. C09-1909 VRW and C09-5360 VRW may require disclosure of information, either documentary or testimonial or both, constituting confidential information incorporating proprietary data, know-how, trade secrets, or other valuable commercial information. Accordingly, the following Protective Order shall govern the handling of all materials and Confidential Information produced in this action ("Produced Material") by any party or any non-party (the "Producing Party"). Produced Material includes, but is not limited to, documents (including electronically-stored information) and things produced pursuant to Rule 34 or Rule 45, testimony upon written questions pursuant to Rule 31, testimony adduced at depositions upon oral examination and transcripts, videotapes, and exhibits thereof pursuant to Rule 30, discovery requests and written responses thereto pursuant to Rules 33 or 35; and discoverable materials derived from any of the foregoing.

**1. Definitions.**

(a) Confidential Information. The term "Confidential Information" shall mean and include information, documents, and things the Producing Party believes in good faith is not generally known to others, and which the Producing Party (i) would not normally reveal to third parties except in confidence or has undertaken with others to maintain in confidence, or (ii) believes in good faith is protected by a right to privacy under federal or state law or any other applicable privilege or right related to confidentiality or privacy.

(b) Materials. The term "materials" shall include, but shall not be limited to: documents; correspondence; memoranda; bulletins; blueprints; specifications; customer lists or other tangible things that identify customers or potential customers; price lists or schedules or other matters identifying pricing; minutes; telegrams; letters; statements; cancelled checks; contracts; invoices; drafts; books of account; worksheets; notes of conversations; desk diaries; appointment books; expense accounts; recordings; photographs; motion pictures; test data; software; hardware; electronically stored information; compilations from which information can be obtained and translated into reasonably usable form through detection devices; sketches; drawings; notes (including laboratory notebooks and records); reports; instructions; disclosures; other writings; models and prototypes and other physical objects.

(c) Outside Counsel. The term "Outside Counsel" shall mean outside counsel of record, and other attorneys, paralegals, secretaries, and other support staff employed by outside counsel of record.

(d) Outside Consultant. The term "Outside Consultant" shall mean a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by Outside Counsel or a Party to serve as an expert witness, or as a consultant in this action, and who is not a current employee of a Party or of a competitor of a Party and who, at the time of retention, is not anticipated to become an employee of a Party or of a competitor of a Party.

(e) In-house Counsel. The term "in-house counsel" shall mean persons for each Party (i) that are attorneys or members of the legal staff or the intellectual property department of the Party (or any initially named Party to this action), (ii) that are employed by the Party (or any initially named Party to this action), and (iii) as part of that employment are required to participate in policy decisions with reference to this action.

(f) Patents-in-Suit. The term "Patents-in-Suit" shall mean any patents asserted by a Party in this case as being infringed, including U.S. Patent Nos. 6,026,392, 6,631,382, 5,802,511 and 6,625,617 and any additional patents that may be asserted.

(g) Source Code. The term "Source Code" is defined as the human-readable computer language instructions corresponding to a computer program, sub-program, or script, including documentation included with such instructions.

## **2. Scope of Protective Order.**

(a) This Protective Order shall govern Confidential Information that is, directly or indirectly, set forth, revealed, produced, or provided: (i) in discovery requests promulgated under the Federal Rules of Civil Procedure and the Local Rules of the Northern District of California, and responses thereto; (ii) in any documents (including electronically-stored information), things, or premises produced pursuant to, or made available for inspection in response to, a discovery request or subpoena under the Federal Rules of Civil Procedure; (iii) during depositions upon oral or written examination under the Federal Rules of Civil Procedure; (iv) in connection with any other discovery taken in this action, whether pursuant to the Federal Rules of Civil Procedure, informally, or by

1 agreement; (v) in correspondence (including attachments and enclosures) relating to this litigation;  
 2 (vi) in submissions to or before the Court, including testimony, briefs, exhibits and declarations; (vii)  
 3 in response to any Order of the Court; and (viii) in connection with any mediation or settlement  
 4 negotiation. This Protective Order shall also govern the handling of documents, and all other forms  
 5 of recorded information, containing or derived from the information in any Confidential Information.  
 6 This Protective Order also shall govern any oral or written conveyance of the contents of  
 7 Confidential Information. This Protective Order also shall apply to (i) Confidential Information  
 8 inadvertently or unintentionally produced without designation consistent with the provisions set  
 9 forth in Paragraph 12 and (ii) inadvertently or unintentionally produced privileged information  
 10 consistent with the provisions set forth in Paragraph 13.

11 (b) This Protective Order has no effect upon, and shall not apply to, (i) any  
 12 Producing Party's use of its own Confidential Information for any purpose; (ii) any person or Party's  
 13 use of documents or other information developed or obtained independently of discovery in this  
 14 litigation for any purpose, whether or not such documents or other information also were produced  
 15 in this litigation; (iii) information that is or becomes publicly available through no breach of the  
 16 provisions of this Protective Order; or (iv) information that is disclosed by a party without restriction  
 17 as to disclosure, provided such party has the right to make the disclosure.

### 18 **3. Designations.**

19 Each party that produces or discloses any materials, answers to interrogatories, responses to  
 20 requests for admission, trial testimony, deposition testimony, and transcripts of trial testimony and  
 21 depositions, or information that the Producing Party believes should be subject to this Protective  
 22 Order may designate the same as: (i) "CONFIDENTIAL" or (ii) "CONFIDENTIAL - ATTORNEYS  
 23 EYES ONLY." (In addition to these designations, special procedures for the inspection of Source  
 24 Code, if any, are set forth in Paragraph 20.)

25 (a) "CONFIDENTIAL". Any party may designate information as  
 26 "CONFIDENTIAL" only if, in good faith belief of such party and its counsel, that the party has not  
 27 already made the information publicly known and the unrestricted disclosure of such information  
 28 could be potentially prejudicial to the business or operations of such party.

(b) “CONFIDENTIAL - ATTORNEYS EYES ONLY”. Any party may designate information as “CONFIDENTIAL - ATTORNEYS EYES ONLY” only if, in the good faith belief of such party and its counsel, the information has not already been made publicly known by the party and is among that considered to be most sensitive by the party, including but not limited to trade secret or other highly confidential research, development, financial or other commercial information.

(c) In the event that additional designations for Confidential Information are needed, the Parties agree that this Protective Order may be modified to incorporate any such needed additional designations. The scope of any such additional designations, and the associated restrictions on access to information subject to any such additional designations, will be agreed upon by the Parties as needed in accordance with Paragraph 18.

#### **4. Designation of Confidential Information.**

The designation of any information as Confidential Information for purposes of this Protective Order shall be made in the following manner:

(a) **Hard Copy / Written Material.** With regard to any hard copy / written material (including transcripts of depositions or other testimony and discovery requests and responses), a legend containing “CONFIDENTIAL” or “CONFIDENTIAL - ATTORNEYS EYES ONLY” or shall be affixed to each page containing Confidential Information.

(b) **Electronically-Stored Information.** With regard to any electronically-stored information produced in searchable .tiff format, a legend “CONFIDENTIAL” or “CONFIDENTIAL - ATTORNEYS EYES ONLY” shall be included on each image containing any Confidential Information. With regard to electronically-stored information produced in a format other than searchable .tiff, an appropriate legend shall be included on each image, page or document to the extent practicable. Where it is not practicable to include a legend on each image, page or document, an appropriate legend shall be affixed to the CD or other media on which the Producing Party produces the electronically-stored information. Any printout made from the CD or other media shall

1 be immediately and conspicuously marked "CONFIDENTIAL" or "CONFIDENTIAL -  
 2 ATTORNEYS EYES ONLY" consistent with the legend affixed to the CD or other media, and also  
 3 with a unique page identifier.

4 (c) Materials, Things, and Premises Produced for Inspection. (i) When files and  
 5 records are produced for inspection, no legend need be affixed in advance of the inspection. For  
 6 purposes of the initial inspection, all Produced Material shall be considered designated as  
 7 "CONFIDENTIAL - ATTORNEYS EYES ONLY." Thereafter, upon a selection of specified  
 8 documents for copying by the inspecting Party, a legend in the form set forth in Paragraph 4(a) shall  
 9 be affixed to each page containing Confidential Information.

10 (d) Deposition Procedures. Whenever a deposition taken on behalf of any Party  
 11 involves a disclosure of Confidential Information of any Party:

12 (i) Deposition transcripts or portions thereof shall be designated as  
 13 containing Confidential Information subject to the provisions of this Protective Order; such  
 14 designation shall be made on the record wherever possible, but a Producing Party may designate  
 15 portions of depositions as containing Confidential Information after transcription of the proceedings;  
 16 a Producing Party shall have until fifteen (15) days after receipt of the deposition transcript to inform  
 17 the other Party or Parties to the action of the portions of the transcript designated  
 18 "CONFIDENTIAL," or "CONFIDENTIAL - ATTORNEYS EYES ONLY"; where a Producing  
 19 Party later designates as confidential portions of a deposition not so designated at the time of the  
 20 deposition, the other Parties shall use their best efforts to obtain any previously disclosed copies of  
 21 the transcript;

22 (ii) The Producing Party shall have the right to exclude from attendance at  
 23 said deposition, during such time as the Confidential Information is to be disclosed, any person other  
 24 than the deponent, Outside Counsel, the court reporter, and Outside Consultants who are permitted  
 25 access to the Confidential Information by this Protective Order; and

26 (iii) The originals of said deposition transcripts and all copies thereof shall  
 27 bear the legend "CONFIDENTIAL," or "CONFIDENTIAL - ATTORNEYS EYES ONLY" as  
 28 appropriate, and the original or any copy ultimately presented to a court for filing shall not be filed



1 unless it can be accomplished under seal, identified as being subject to this Protective Order, and  
 2 protected from being opened except by order of this Court.

3 **5. Challenges to Designations of Confidential Information.**

4 At any stage of these proceedings, any party may object to a designation of the materials as  
 5 Confidential Information. The party objecting to confidentiality shall notify, in writing, counsel for  
 6 the Producing Party of the objected-to materials and the grounds for the objection. If the dispute is  
 7 not resolved consensually within five (5) business days of receipt of such a notice of objections, the  
 8 objecting party may move the Court for a ruling on the objection. The objecting party shall have the  
 9 burden to show that the designation of materials as Confidential Information is not appropriate. The  
 10 materials at issue shall be treated as Confidential Information, as designated by the Producing Party,  
 11 until the Court has ruled on the objection or the matter has been otherwise resolved.

12 **6. Disclosure and Use of Confidential Information.**

13 Confidential Information shall be used solely for the purpose of this litigation and not for any  
 14 other purpose and disclosed only to those persons identified in this Paragraph.

15 (a) "CONFIDENTIAL". Information designated "CONFIDENTIAL" shall be  
 16 viewed only by Outside Counsel of the receiving Party, by Outside Consultants (pursuant to the  
 17 terms of Paragraph 7), and by the additional individuals listed below:

18 (i) Employees or executives of the Parties (including necessary secretarial  
 19 staff) who participate in decisions with reference to this action, and who executed the  
 20 Acknowledgment and Agreement to Be Bound attached hereto as Exhibit A;

21 (ii) Attorneys or members of the legal staff of the Parties involved in this  
 22 action, including those defined herein as in-house counsel and others who are involved in the  
 23 research and development of technology;

24 (iii) Litigation vendors retained for the purpose of outside photocopying,  
 25 imaging, database, graphics, translation, and design services retained by the Outside Counsel, to the  
 26 extent necessary to assist such counsel in this litigation, a representative of which has signed the  
 27 Acknowledgment and Agreement to Be Bound attached hereto as Exhibit A;  
 28

(iv) Stenographic and videotape court reporters engaged in proceedings incident to preparation for deposition or trial;

(v) Court personnel involved with this litigation; and

(vi) Stenographic and clerical employees associated with the individuals identified above;

(vii) Any designated arbitrator or mediator who is assigned to hear this matter, or who has been selected by the Parties, and his or her staff, who has signed the Acknowledgment and Agreement to Be Bound attached hereto as Exhibit A; and

(viii) Professional jury or trial consultants and their staff retained in connection with this litigation, a representative of which has signed the Acknowledgment and Agreement to Be Bound attached hereto as Exhibit A, and mock jurors retained by such consultants to assist them in their work.

(b) "CONFIDENTIAL - ATTORNEYS EYES ONLY". Information designated "CONFIDENTIAL - ATTORNEYS EYES ONLY" shall be viewed only by Outside Counsel of the Parties, the categories set forth in Paragraphs 6(a)(iii) - (viii) and by Outside Consultants under the conditions set forth in Paragraph 7.

(c) Drafters and Recipients. With respect to material designated "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS EYES ONLY," any person indicated on the face of the document to be its originator, author, a recipient of a copy thereof, or shown to previously have had access to the document may be shown the same.

(d) Custody of Produced Materials. All information which has been designated as "CONFIDENTIAL," or "CONFIDENTIAL - ATTORNEYS EYES ONLY" by the Producing Party, and any and all reproductions thereof, shall be retained in the custody of the Outside Counsel for the receiving Party identified in Paragraph 1, except that Outside Consultants authorized to view such information under the terms of this Protective Order may retain custody of copies such as are necessary for their participation in this litigation.

**7. Access by Outside Consultants.**



(a) All proposed Outside Consultants may receive Confidential Information (including Source Code as defined above) only after the following conditions have been satisfied: (i) the proposed recipient has executed the Acknowledgment and Agreement to Be Bound attached hereto as Exhibit A; (ii) the Acknowledgment and Agreement has been served on the Producing Party together with the following information (A) any and all current professional relationship(s) with any of the Parties, any known competitor of the Parties, or any known affiliate of any of the foregoing Persons or entities and (B) a curriculum vitae showing employment/consulting history, including any prior employment or affiliation with any of the Parties, any known competitor of the Parties, or any known affiliate of any of the foregoing Persons or entities; publications; and prior testimony; and (iii) the Producing Party has approved the recipient pursuant to Paragraph 7(b) or the Court has ruled on an application that the proposed recipient may receive the Confidential Information. To the extent that the specific identification of an Outside Consultant's client cannot be provided due to a confidentiality agreement, or otherwise, the receiving Party shall disclose this fact to the Producing Party for the purpose of assessing any actual or potential conflict.

(b) The Producing Party shall have five (5) calendar days after notice complying with the requirements of Paragraph 7(a) is received to object to the disclosure of the Produced Material to the person(s) identified if service of the notice under Paragraph 7(a) is accomplished by hand, email or facsimile. If service is accomplished by other means, then the Producing Party shall have seven (7) calendar days to object. Service after 5:00 p.m. local time of counsel for the Producing Party shall be deemed effective the following day. Any objection shall be made in good faith, stating with particularity the reasons for the objection, and must be served in writing on all Parties; failure to object within the period referenced above shall be deemed approval, and the person(s) shall thereafter be qualified to have access to the Confidential Information of the Producing Party. Should the Parties be unable to resolve any objection, then the receiving Party may raise this matter with the Court and request an Order granting such person's access to the Confidential Information pursuant to the terms of this Order; failure of the Producing Party to file an opposition with the Court within ten (10) calendar days shall be deemed approval, and the person(s) shall thereafter be qualified to have access to the Confidential Information of the Producing Party.

(c) The administrative and clerical staff of an Outside Consultant identified pursuant to Paragraph 7 shall be deemed to have signed the Acknowledgment and Agreement to Be Bound in the form of Exhibit A when the Outside Consultant supervising such individuals has executed the Acknowledgment and Agreement to Be Bound.

**8. Prosecution Bar.**

Persons (including without limitation Outside Counsel, In-house Counsel, and Outside Consultants) who access "CONFIDENTIAL - ATTORNEYS' EYES ONLY" materials (unless such access is strictly limited to financial documentation) of the opposing Producing Party shall not, for a period of one (1) year following final resolution of this action, draft, supervise or assist in drafting or amending patent claims or patent specifications specifically related to the "CONFIDENTIAL - ATTORNEYS' EYES ONLY" materials generated by, designated by and actually received from the opposing Producing Party; provided that nothing in this Paragraph shall operate to preclude any such person from fulfilling and/or assisting in the fulfillment of any prior art disclosure obligations to the United States Patent and Trademark Office that may arise as a consequence of knowledge of public material obtained during the course of this litigation.

**9. Filing Under Seal.**

Without written permission from the Producing Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Produced Material or other documents designated as Confidential Information. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5.

**10. Maintenance of Confidential Information.**

All Confidential Information shall be held in confidence by those inspecting or receiving it, and shall be used only for purposes of this action. Counsel for each Party, and each person receiving Confidential Information, shall take reasonable precautions to prevent the unauthorized or inadvertent disclosure of such information.

**11. Unauthorized Disclosure.**

(a) If Confidential Information is disclosed to any person other than in a manner authorized by this Protective Order (an "Unauthorized Person"), the Party responsible for the

1 unauthorized disclosure, and any Party with knowledge of the unauthorized disclosure shall,  
 2 immediately upon learning of such disclosure, inform the Producing Party of all pertinent facts  
 3 relating to such disclosure including, without limitation, the identification of the Confidential  
 4 Information disclosed and the Unauthorized Persons to whom the disclosure was made.

5 (b) The Party responsible for the unauthorized disclosure shall also promptly take  
 6 all reasonable measures to recover the Confidential Information disclosed without authorization and  
 7 to ensure that no further or greater unauthorized disclosure or use of such Confidential Information  
 8 is made by doing the following, without limitation, (i) promptly informing the Unauthorized Person  
 9 that the disclosed information contains Confidential Information and of the provisions of this  
 10 Protective Order; (ii) requesting that the Unauthorized Person sign an Acknowledgment and  
 11 Agreement to Be Bound in the form attached as Exhibit A (to be promptly provided to the Producing  
 12 Party); and (iii) retrieving all copies of Confidential Information disclosed to the Unauthorized  
 13 Person. The Producing Party and party that disclosed the Confidential Information shall cooperate in  
 14 good faith in this effort.

15 (c) Any person found to have made an impermissible use of any Confidential  
 16 Information will be subject to, without limitation, appropriate civil penalties, including contempt of  
 17 court.

18 (d) No Party shall be responsible to another party for disclosure of Confidential  
 19 Information under this Protective Order if the information in question is not labeled or otherwise  
 20 identified as such in accordance with this Protective Order.

21 **12. Inadvertent Disclosure of Confidential Information.**

22 An inadvertent failure to designate qualified information, documents or things as  
 23 "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS EYES ONLY" does not, standing alone,  
 24 waive the Producing Party's right to secure protection under this Order for such material. Upon  
 25 discovery of an inadvertent failure to designate, the Producing Party may give written notice to the  
 26 receiving Party that the document or thing produced is deemed Confidential Information, and that  
 27 the document or thing produced should be treated as such in accordance with that designation under  
 28 this Protective Order. Upon receipt of such notice, the receiving Party must make reasonable efforts

1 to assure that the material is treated in accordance with the terms of this Order, subject to the right to  
2 challenge the propriety of such designation(s). If the receiving Party has disclosed the materials  
3 before receiving the designation, the receiving Party must notify the Producing Party in writing of  
4 each such disclosure. The Producing Party shall provide substitute copies of documents bearing the  
5 inadvertently-omitted confidentiality designation.

6 **13. Inadvertent Disclosure of Privileged or Protected Information.**

7 Subject to the provisions of Federal Rule of Evidence 502, inspection or production of  
8 documents (including physical objects) shall not constitute a waiver of the attorney-client privilege,  
9 work product immunity, or any other applicable privilege or immunity, if, after the Producing Party  
10 becomes aware of any such disclosure, the Producing Party designates any such documents as within  
11 the attorney-client privilege, work product immunity or any other applicable privilege or immunity,  
12 and requests in writing return of such documents to the Producing Party. Upon request by the  
13 Producing Party, the receiving Party shall immediately undertake to gather the original and all copies  
14 of the document(s), tangible thing(s), or information and shall immediately return the original and all  
15 such copies to the Producing Party. Return of such document(s), tangible thing(s), or information to  
16 the Producing Party shall not preclude the receiving Party from later moving to compel production  
17 of the returned document(s), tangible thing(s), or information; provided, however, that such  
18 challenge shall not assert as a ground for challenge the fact of the initial production or inspection of  
19 the documents later designated as attorney-client privileged, work product, or subject to another  
20 applicable privilege or immunity.

21 **14. Termination of Access.**

22 (a) In the event that any person or Party ceases to be engaged in the conduct of  
23 this litigation, such person's or Party's access to any and all Confidential Information shall be  
24 terminated. In addition, all copies of Confidential Information shall be returned or destroyed  
25 consistent with the procedure in Paragraph 15 as soon as practicable, and no later than forty-five (45)  
26 calendar days, after such person or Party ceases to be engaged in the conduct of this litigation.  
27  
28

(b) The provisions of this Protective Order shall remain in full force and effect as to any person or Party who previously had access to any Confidential Information, except as may be specifically ordered by the Court or consented to by the Producing Party.

**15. Termination of Litigation.**

(a) Within sixty (60) days of final termination of this action, including any and all appeals, counsel for each Party shall certify to the other Parties that counsel and the Party that counsel represents have destroyed or returned all Confidential Information to the party that produced the information (including any copies, excerpts, and summaries thereof and has purged all such information from all machine-readable media on which it resides), except that Outside Counsel of the receiving party may retain one archival copy of each such document, subject to the terms and conditions of this Order, to maintain a complete file of the litigation. Further, attorney work product materials that contain Confidential Information need not be destroyed, but, if they are not destroyed, the person in possession of the attorney work product will continue to be bound by this Protective Order with respect to all such retained information.

(b) This Protective Order shall survive the termination of this action and the Court shall retain jurisdiction to enforce its terms and to make such amendments and modifications to this Protective Order as may be appropriate. Notwithstanding the foregoing, a Party may seek the written permission of the Producing Party or further order of the Court with respect to dissolution or modification of this Protective Order.

**16. Limitations on Scope of Protective Order.**

(a) The restrictions and obligations set forth herein shall not apply to any information that (a) the Parties agree, or the Court rules, should not be designated Confidential Information; (b) the Parties agree, or the Court rules, is already public knowledge; (c) the Parties agree, or the Court rules, has become public knowledge other than as a result of disclosure by the receiving Party, its employees, or its agents in violation of this Protective Order; or (d) has come or shall come into the receiving Party's legitimate knowledge independently of the production by the Producing Party. Independent knowledge must be established by preproduction documentation.

1 (b) The restrictions and obligations herein shall not be deemed to prohibit  
2 discussions of any Confidential Information with anyone if that person obtained legitimate  
3 possession thereof by means not in violation of this Protective Order and other law.

4 (c) Nothing herein shall be construed to prevent disclosure of Confidential  
5 Information if such disclosure is required by law or by order of the Court.

6 (d) Nothing herein is intended to prohibit or restrict in any way a party's or its  
7 counsel's use or distribution of its own information.

8 (e) This Protective Order shall be without prejudice to the right of any party to  
9 oppose production of any information for lack of relevance or any other ground other than the mere  
10 presence of Confidential Information. The existence of this Protective Order shall not be used by  
11 any party as a basis for discovery that is otherwise not proper under the Federal Rules of Civil  
12 Procedure.

13 (f) Nothing in this Protective Order shall bar counsel from rendering advice to  
14 their clients with respect to this litigation and, in the course thereof, relying upon any information  
15 designated as Confidential Information, provided that the contents of the information shall not be  
16 disclosed in violation of this Protective Order.

17 (g) Nothing herein shall prejudice the right of any party to object to the  
18 production of any discovery material on the grounds that the material is protected as privileged or as  
19 attorney work product.

20 (h) Testifying experts' draft reports, notes, and outlines of draft reports shall not  
21 be subject to discovery in this case, nor shall any such drafts, notes or outlines of draft reports that  
22 the testifying expert prepared in other cases be subject to discovery in this case.

23 (i) Discovery of materials provided to testifying experts shall be limited to those  
24 materials, facts, consulting expert opinions, and other matters actually relied upon by the testifying  
25 expert in forming his or her final report, trial or deposition testimony, or any opinion in this case. No  
26 discovery can be taken from any consulting expert who does not testify, except to the extent that  
27 consulting expert has provided information, opinions or other materials to a testifying expert, who  
28



1 then relies upon such information, opinions or other materials in forming his or her final report, trial  
2 or deposition testimony or any opinion in this case.

3 (j) No conversations or communications between Outside Counsel and any  
4 testifying or consulting expert will be subject to discovery unless the conversations or  
5 communications are relied upon by such experts in formulating opinions that are presented in  
6 reports, trial or deposition testimony in this case.

7 (k) Materials, communications (including email) and other information exempt  
8 from discovery under the foregoing Paragraphs shall be treated as attorney-work product for the  
9 purposes of this litigation and Protective Order.

10 **17. Notice.**

11 Transmission by e-mail or facsimile is acceptable for all notification purposes herein.

12 **18. Modification of Protective Order.**

13 (a) The Parties may agree to amend this Protective Order in the event that  
14 modifications become necessary during the course of the litigation. Any proposed modification  
15 requires the agreement of all Parties in order to be incorporated in this Protective Order. One or  
16 more Parties may move the Court to modify the Protective Order if an agreement on proposed  
17 modifications cannot be reached among all Parties.

18 (b) The Court may modify the terms and conditions of this Protective Order for  
19 good cause, or in the interest of justice, or on its own order at any time in these proceedings. The  
20 Parties prefer that the Court provide them with notice of the Court's intent to modify the Protective  
21 Order and the content of those modifications, prior to entry of such an order.

22 **19. Use of Protective Order by Non-Parties.**

23 An entity or person that is not a party to this action may protect any Confidential Information  
24 in its possession, custody or control as provided by this Order. Such entity or person may produce  
25 any such Confidential Information subject to all rights, protections and obligations afforded the  
26 Parties under this Order.

27 **20. Source Code.**

1 The parties have determined that special procedures are required for the protection of Source  
 2 Code (as defined above) that may be produced during this action. These procedures are in addition  
 3 to, and do not supplant, any of the protections outlined elsewhere in this Protective Order.

4 (a) Access. The Source Code of any other party may be disclosed only to Outside  
 5 Counsel of the receiving Party and Outside Consultants under the conditions set forth in Paragraph 7.  
 6 In addition, court reporters are permitted to transcribe testimony discussing Source Code, provided  
 7 that any such transcript pages are marked "HIGHLY CONFIDENTIAL - SOURCE CODE -  
 8 ATTORNEYS' EYES ONLY"

9 (b) Protocol for Review of Timeline, Inc. Source Code. Source Code shall be  
 10 designated as "CONFIDENTIAL - ATTORNEYS EYES ONLY" by DRT, and any and all  
 11 reproductions thereof shall be retained in the custody of the Outside Counsel for the receiving Party  
 12 identified in Paragraph 1, except that Outside Consultants authorized to view such information under  
 13 the terms of this Protective Order may retain custody of copies such as are necessary for their  
 14 participation in this litigation. Any Source Code received by Outside Counsel or Outside  
 15 Consultants shall be maintained in a locked safe or desk. Source Code may be printed by Outside  
 16 Counsel or Outside Consultants only for purposes of working on this matter and any printed copies  
 17 of Source Code shall be maintained in a locked safe or desk.

18 (c) Protocol for Review of Sybase and/or Informatica Source Code.

19 (i) Location of Source Code Review. For any Source Code that is  
 20 produced, the Producing Party (i.e., either Sybase or Informatica) shall make an electronic form of  
 21 the Source Code available for review, during normal business hours or at other mutually agreeable  
 22 times, at a third party Source Code escrow service or another mutually agreed upon location.

23 (ii) Security Protocol and Restrictions. At its discretion, the Producing  
 24 Party may provide the receiving Party with a special network address and VPN token which may be  
 25 used together with a review computer (also provided by the Producing Party) to access a virtual  
 26 workstation, hosted by the Producing Party, on which the Source Code will reside, such that the  
 27 receiving Party will have access to the virtual workstation but will not have access to any other  
 28 applications or services outside of the virtual workstation (e.g., intranet, Internet, shared drives, e-

mail) and will not be in possession of a physical copy of the Source Code but will have access to such a copy via the virtual workstation, provided that: the restrictions imposed by the Producing Party shall not impair the receiving Party's ability to use search applications in conducting its review. The purpose of this provision is to allow a Producing Party to prevent data from being loaded on the computer(s) from an external source, or copied from the produced computer(s) to an external source, and otherwise to allow the Producing Party to prevent the Source Code from being compromised in any manner.

(iii) Conditions of Availability. The Source Code must be made available for inspection under the following conditions: (1) the review computer with access to Source Code will be made available for inspection during regular business hours upon reasonable notice; (2) the receiving Party must be allowed reasonable privacy to work (notwithstanding that the Producing Party's security measures may include monitoring the review environment to ensure that the security of the Source Code is not compromised); (3) the receiving Party must be allowed to arrange for printing of the Source Code, in accordance with Paragraph 20(c)(v); and (4) no Producing Party shall interfere with or disable any aspects of the review computer reasonably necessary for review of the produced Source Code. The Producing Party need not produce Source Code on a computer such that it can be compiled into an executable program; however, the receiving Party reserves the right to request Source Code in such form at a future time, and the parties agree to negotiate in good faith to comply with such a request.

(iv) Conditions of Review. In addition to the other protections afforded under this Protective Order: (1) a receiving Party shall not be allowed to copy or download the Source Code, to copy or download screen images of the Source Code (or any portion thereof) or otherwise to replicate any portion of the Source Code by photographic or any other means (except that a person inspecting the Source Code may take notes describing the structure and flow of the Source Code); (2) a receiving Party shall take no steps to defeat or circumvent security systems in place, such as turning on ports that would allow information to be copied from the computer with access to Source Code to another computer, memory stick, or other unauthorized device; (3) in the event that any security measures fail, the receiving Party shall not attempt to copy Source Code; (4)

1 the receiving Party shall make no attempts to remove the Source Code or the review computer from  
 2 the premises at which the Source Code is made available; and (5) the receiving party shall not edit or  
 3 alter the Source Code, whether by use of review software or otherwise.

4 (v) Printing. The receiving Party may request paper copies of limited  
 5 portions of Source Code that are reasonably necessary for the preparation of court filings, pleadings,  
 6 expert reports, or other papers, or for deposition or trial, but shall not request paper copies for the  
 7 purposes of reviewing the Source Code other than electronically as set forth in paragraph 20(c)(i)-  
 8 (iv) in the first instance. The Producing Party shall provide all such Source Code in paper form  
 9 including bates numbers and the label "HIGHLY CONFIDENTIAL - SOURCE CODE --  
 10 ATTORNEYS' EYES ONLY" ("Code Printouts"). The Producing Party may challenge the amount  
 11 of Source Code requested in hard copy form pursuant to the dispute resolution procedure and  
 12 timeframes set forth in Paragraph 5, whereby the receiving Party shall have the burden to show that  
 13 amount of Source Code requested in hard copy form is appropriate.

14 The receiving Party's Outside Counsel shall maintain a complete log of all Bates-numbered  
 15 pages of such Code Printouts, including the names of each individual granted access thereto as  
 16 authorized hereunder, and the locations where such Code Printouts are stored. The receiving Party  
 17 may, without seeking authorization from the Producing Party, make no more than two paper copies  
 18 of the Code Printouts. The receiving Party shall maintain all Code Printouts in a secured, locked  
 19 area. The receiving Party shall not create any electronic or other images of the paper copies and shall  
 20 not convert any of the information contained in the paper copies into any electronic format. The  
 21 receiving Party shall only make additional paper copies if such additional copies are (1) necessary to  
 22 prepare court filings, pleadings, or other papers (including a testifying expert's expert report), (2)  
 23 necessary for deposition, or (3) otherwise necessary for the preparation of its case. Any paper copies  
 24 used during a deposition shall be retrieved by the Producing Party at the end of each day and must  
 25 not be given to or left with a court reporter or any other individual. At the termination or settlement  
 26 of this litigation, all other Code Printouts are to be delivered to the Producing Party.

27 (vi) Copies. Alternatively and in addition, for Source Code that is  
 28 originally produced by a Party in paper or electronic image form (e.g., TIFF or PDF), the receiving

Party may, without seeking authorization from the Producing Party, make no more than two paper copies of the produced Source Code ("Source Code Copies") and shall take steps adequate to ensure that no further copies are made, including by making only paper copies. The receiving Party may not make electronic scan files of, or electronically transmit the Code Printouts or Source Code Copies. Any such code shall be designated "HIGHLY CONFIDENTIAL - SOURCE CODE - ATTORNEYS' EYES ONLY" and access shall be limited to those individuals authorized to access CONFIDENTIAL - ATTORNEYS EYES ONLY materials pursuant to Paragraph 6(b). The receiving Party's Outside Counsel shall maintain a complete log of all Bates-numbered pages of such Source Code Copies, including the names of each individual granted access thereto as authorized hereunder, and the locations where Source Code Copies are stored. At the termination or settlement of this litigation, all Source Code Copies are to be delivered to the Producing Party. For the elimination of any doubt, this Section applies only to Source Code produced initially in paper or electronic image form, and does not apply to electronic forms of Source Code or to the Code Printouts referenced in Paragraph 20(c)(v).

(d) Additional Provisions Applicable to Both Protocols.

(i) The Parties agree to designate as "HIGHLY CONFIDENTIAL—SOURCE CODE - ATTORNEYS' EYES ONLY" any reports, submissions, discovery, or other documents incorporating any portion of another Party's Source Code. Any such documents filed with the Court shall be submitted under seal, in accordance with the Court's Local Rules.

(ii) Outside Counsel for the receiving Party shall ensure that any Source Code (including Code Printouts and Source Code Copies) is stored in a manner that prevents unauthorized access.

(iii) Nothing in this Protective Order is intended to prohibit the copying of small noncontiguous portions of Source Code (portions that are two pages or less such that there are no more than two consecutive pages) for the sole purpose of inclusion in an Expert Report, subject to Paragraph 20(d)(i) and 20(c)(vi) logging.

(iv) The parties are undertaking their best efforts and acting in good faith to anticipate and identify issues that may arise with the exchange of Source Code. Both parties

1 recognize, however, that they may have overlooked some potential issues. If an unanticipated issue  
 2 arises in connection with the exchange of Source Code, the parties will use their best efforts to  
 3 resolve the issue amongst themselves, and as a last resort, turn to the Court for assistance in reaching  
 4 a resolution.

5 **21. Jurisdiction of the Court.**

6 The Parties, all persons subject to discovery in these proceedings, and all persons who  
 7 receive Confidential Information pursuant to this Protective Order, consent to and shall be subject to  
 8 the jurisdiction of this Court in any proceeding relating to performance under, compliance with, or  
 9 violation of this Protective Order. The Court hereby retains jurisdiction to interpret and enforce this  
 10 Protective Order during the pendency of this action and following dismissal, if any, and further  
 11 retains jurisdiction to modify, amend or make additions to this Protective Order as it may from time  
 12 to time deem appropriate.

13 DATED: September 14, 2010.

REED SMITH LLP

15 By: /s/ James A. Daire\*

16 James A. Daire  
 17 Attorneys for  
 Sybase, Inc. and Informatica Corporation

18 DATED: September 14, 2010.

ROHDE & VAN KAMPEN PLLC

20 By: /s/ Gregory G. Schwartz

21 Gregory G. Schwartz  
 22 Attorneys for  
 Data Retrieval Technology LLC

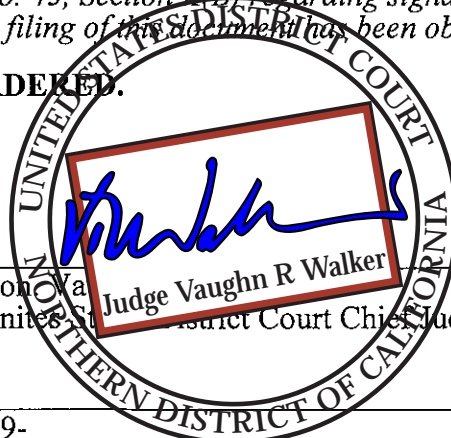
23 *\*Filer's Attestation: Pursuant to General Order No. 45, Section X(B) regarding signatures, Gregory  
 24 G. Schwartz hereby attests that concurrence in the filing of this document has been obtained.*

25 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

26 DATED: September 16, 2010.

27 By

28 Hon. Va. Judge Vaughn R Walker  
 United States District Court Chief Judge





**EXHIBIT A****ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], declare under penalty of perjury that I have read in its entirety and understand the Protective Order that was issued by the United States District Court for the Northern District of California in the case of *Sybase et al. v. Data Retrieval Technology LLC*, Case No. C08-05481 VRW and Related Case Nos. C09-1909 VRW and C09-5360 VRW. I agree to comply with and to be bound by all the terms of this Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_